

REMARKS/ARGUMENTS

Claims 1-35 are pending in the present application. Claims 29-32 and 35 are allowed. The drawings are objected to as failing to comply with 37 C.F.R. 1.84(p)(5) because they do not include a reference sign in Figs. 1 and 3. Figs. 1 and 3 have been amended in compliance with 37 C.F.R. 1.121(d) and replacement sheets are provided. Claims 1-8, 24 and 25 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 9-13 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Dowty (U.S. Pat. No. 3,163,987). Claims 4, 5, 9, 10, 17, 18, and 33 are rejected under 35 U.S.C. § 102(b) as being anticipated by Folsom (U.S. Pat. No. 6,530,855). Claim 11 has been rejected under 35 U.S.C. § 103 as being unpatentable over Folsom. Claims 1, 8, 16, 20-22 and 27 are rejected under 35 U.S.C. § 103 as being unpatentable over Folsom in view of Moya (U.S. Pat. No. 6,279,452). Claims 12-15, 19, 23, 26, 28, and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 2, 6, 7, 24, and 25 would be allowable if rewritten to overcome the 35 U.S.C. § 112, second paragraph, rejections and were rewritten in independent form. Applicant respectfully traverses all rejections.

Claims 1-8, 24 and 25 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. Specifically, in claim 1 the Examiner considers the limitation "control power means for pivoting the yokes and supplying pressurized fluid to the

hydrostatic power units" as a proper 112, paragraph 6, means plus function limitation except that there is nothing in the specification that defines what elements correspond to this means. The Applicant considers the servo control system 62 that includes a single piece control housing 64 as the control power means. (See page 12, lines 10-15). The single piece control housing 64 is specially equipped with several servo controls, servo valves and pistons that are able to pivot the yokes and supply pressurized fluid to the hydrostatic power units 23, 24 of the yokes. (See page 12, line 16-page 13, line 16). Thus, Applicant asserts that the specification does define the elements that correspond to this means. Therefore, Applicant respectfully requests the 35 U.S.C. § 112 rejection be withdrawn for claim 1. Additionally, amendments have been made to claims 2, 3, 4, 7, and 24 to overcome the other 112 rejections.

Claims 9-13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dowty. Anticipation "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 U.S.P.Q.2d 1101, 1103 (Fed. Cir. 1995). "[P]rior knowledge by others requires that all of the elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." Elan Pharms., Inc. v. Mayo Foundation for Medical Educ. & Research, 304 F.2d 1221, 1227, 64 U.S.P.Q.2d 1292 (Fed. Cir. 2002) (citing *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999); Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571 7 U.S.P.Q.2d 1057, 1064 (Fed. Cir. 1988)). "The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and

detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention." Id. (citing Crown Operations Int'l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375, 62 U.S.P.Q.2d 1917, 1921 (Fed. Cir. 2002); In re Spada, 911 F.2d 705, 708 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990)). See also PPG Indus., Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566, 37 U.S.P.Q.2d 1618, 1624 (Fed. Cir. 1996) (emphasis added).

The Applicant notes that claims 12 and 13 have been considered objected to as being dependent upon a rejected base claim but if rewritten in independent form including all limitations of the base claim and any intervening claims is considered allowable subject matter. Claim 9 has been amended to require that the yokes "contain integrated fluid passages" which is the claim limitation of dependent claim 12 that has been considered allowable subject matter by the Examiner. Consequently dependent claim 12 has been cancelled. Therefore, claim 9 as amended, is believed to be in allowable form. Also, dependent claims 10-11 and 13-19 depend on claim 9 and for at least this reason are also considered in allowable form.

Claims 4, 5, 9, 10, 17, 18, and 33 are rejected under 35 U.S.C. § 102(b) as being anticipated by Folsom. Independent claim 4 requires in part "wherein a control system including a single piece housing controls a flow of fluid to the servo pistons to determine the orientation of the yokes and a flow of fluid to the cylinder blocks and rotational power supplied to the shafts by the cylinder blocks." In contrast, Folsom teaches a stationery manifold block to accommodate its fluid passages between the pump and the motor, with the porting of hydrostatic flow through the piston slippers to the cylinder block. (Col.

11, lines 57-65 and see PCT/US98/24053). Thus, Folsom does not teach each and every limitation of the claimed invention and the anticipation rejection must be withdrawn. Claims 5-7 depend on claim 4 and for at least this reason are considered in allowable form.

Independent claim 9 was also rejected under 35 U.S.C. § 102(b) as being anticipated by Folsom, but as discussed above, claim 9 has been amended to add the limitation of claim 12 that the Examiner did not consider anticipated by the Folsom reference. Thus, each and every limitation of the claimed invention is not taught by the Folsom reference and claim 9 is considered in allowable form. Also, claims 10-11 and 13-19 depend on claim 9 and are also considered in allowable form.

Independent claim 33 has also been rejected under 35 U.S.C. § 102(b) as being anticipated by Folsom. Claim 33 has been amended to add the limitation of dependent claim 34 of "wherein a single piece fluid control porting plate is secured to the control housing to route hydraulic fluid to multiple locations within the control housing and to servo valves therein." Claim 34 was considered allowable subject matter by the Examiner but was objected to as being dependent upon a rejected base claim and thus, by writing its limitation into claim 33, claim 33 is now considered in allowable form.

Claims 1, 8, 16, 20-22 and 27 have been rejected under 35 U.S.C. § 103 as being unpatentable over Folsom in view of Moya. Applicant asserts that the Examiner has not provided a *prima facie* case of obviousness because the apparatus that would result from the combination would not meet each limitation of independent claim 1. The teachings or suggestions to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's

disclosure. See In re Vacck, 997 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); MPEP § 2143. To establish a *prima facie* case of obviousness, all the claim limitations must be taught by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 57 C.C.P.A. 1029, 1032 (1970).

Claim 1 in part requires "two yokes pivotably mounted on the frame to pivot on the frame in intersecting paths, stop means on the yokes and on the frame to limit the pivotal movement of the yokes." As admitted by the Examiner, Folsom "does not disclose that there is a stop means on the yokes and frame to limit the pivotal movement of the yokes". (Office action, page 4). Moya also does not disclose two yokes pivotably mounted on the frame to pivot the frame in intersecting paths and a stop means on the yokes and on the frame to limit the pivotal movement of the yokes. Moya, instead teaches a single cylindrical drum having a spherical boundary face that slides along on a corresponding shaped out sliding face 23 on the closed plate 17 such that a set screw 24A is served to set a minimum displacement volume of the axial piston machine 1. (Col. 3, lines 55-62). Therefore, the combination of the Folsom and Moya references would not have stop means on two yokes and on the frame to limit pivotal movement of the yokes as is required by claim 1. In order to arrive at the claimed invention the Applicant's specification must be used as a blueprint. Thus, each and every limitation of claim 1 would not be met by the proposed combination and the obviousness rejection must be withdrawn. Claims 2-3 and 8 depend on claim 1 and for at least this reason are also considered in allowable form.

Independent claim 20 similarly requires "two yokes pivotably mounted on the frame to pivot with respect to the frame and intersecting paths" and "stop means on the yokes and on the frame to limit the pivotal movement of the yokes". Again, as set forth above, Moya does not teach a stop means on two yokes as is required by the claim and the Applicant's specification must be as a blueprint in order to determine how to place multiple stopping means onto multiple yokes to provide the claimed invention. Thus, each and every limitation of independent claim 20 does not result from the combination of Folsom and Moya and the obviousness rejection must be withdrawn. Dependent claims 21-28 all depend on independent claim 20 and for at least reason are also considered in allowable form.

CONCLUSION

In view of the above remarks, Applicant believes that claims 1-11, 13-33 and 35 are in condition for allowance and Applicant respectfully requests allowance of such claims.

If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200.

All fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



Timothy J. Zarley
Reg. No. 45,253
ZARLEY LAW FIRM, P.L.C

Application No. 10/723,012
Reply to Office Action dated May 26, 2005

Attorney Docket No. P06633US1-5202

Capital Square
400 Locust Street, Suite 200
Des Moines, IA 50309-2350
Phone No. (515) 558-0200
Fax No. (515) 558-7790
Customer No. 34082
Attorneys of Record

- JLH/bjs -

Amendments to the Drawings:

The attached sheets of drawings include changes to Figs. 1 and 3. These sheets, which include Figs. 1 and 3, replace the original sheets including Figs. 1 and 3. In Figs. 1 and 3, previously omitted element 64 has been added.

Attachment: 2 Replacement Sheets
 2 Annotated Sheets Showing Changes



